

COURT OF APPEAL OF STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE

May 14, 2001

D037031 In re Guy O., a Juvenile

The appeal is dismissed. Huffman, J.; We Concur: Kremer, P.J., McIntyre, J.

Court convened at 9:00 a.m.

Present: The Honorable Patricia Benke, Acting Presiding Justice, and The Honorable Associate Justices James McIntyre and Terry O'Rourke

Deputy Clerk: D. E. Moore

D036994 Cutler v. Coast Community College District

Cause called on merits. James Garrettson Harker, Esq. argued for appellant. David C. Larsen, Esq. argued for respondent. Mr. Harker replied for appellant. Cause submitted.

D034908 Fryery et al. v. Coyne Development, Inc., et al.

Cause called on merits. John C. Skube, Esq. argued for appellant. Paul K. Fine, Esq. argued for appellant. Darin Wessel, Esq. argued for respondent. Barry M. Vrevich, Esq. argued for respondent. Mr. Fine replied. Cause submitted.

D037274 Caffrey v. City of Orange

Cause called on merits. Jeffrey Isaac Ehrlich, Esq. argued for appellant. Debra L. Bray, Esq. argued for respondent. Mr. Ehrlich replied for appellant. Cause submitted.

Court recessed at 10:25 a.m. until 1:30 p.m.

D036586 In re Wallace on Habeas Corpus

The petition is denied without prejudice to refile after consideration by the superior court.

D037912 Chaidez v. Superior Court of San Diego County/People

The petition is denied.

D037888 Daniels v. Superior Court of San Diego County/People

The petition is denied.

D036852 In re Marriage of Barber

The order offsetting child support arrearages against the equalization debt is reversed and the trial court shall amend its order in accordance with this opinion. As so amended, the order is affirmed. The parties shall bear their own fees and costs on appeal. McDonald, J.; We Concur: Kremer, P.J., Nares, J.

D036191 People v. Davis

The judgment is affirmed. Kremer, P.J.; We Concur: Huffman, J., O'Rourke, J.

COURT OF APPEAL OF STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE

May 14, 2001 (Continued)

D034932 People v. Flores

The true findings on the section 667.5, subdivision (b), and section 667, subdivisions (b) through (i), allegations are reversed. In all other respects the judgment is affirmed. Benke, J.;
We Concur: Kremer, P.J., Huffman, J.

D036819 People v. Scott

Judgment affirmed. O'Rourke, J.; We Concur: Benke, Acting P.J., McDonald, J.

D036270 People v. Beckman

Judgment affirmed. Kremer, P.J.; We Concur: Huffman, J., O'Rourke, J.

D035610 People v. Solomon

The judgment is affirmed. McDonald, J.; We Concur: Nares, Acting P.J., Haller, J.

D037872 Vega v. Superior Court of Imperial County/People

The petition is denied.

**D037762 Western States Fire Protection Company et al. v. Superior Court of San Diego
County/Troyer et al.**

At the request of petitioners, the petition for writ of mandate is dismissed.

D036582 In re Woods on Habeas Corpus

The petition is denied.

D037652 In re Kuykendall on Habeas Corpus

The petition is denied.

D037452 In re Le on Habeas Corpus

The petition is denied.

D037723 In re Consiglio on Habeas Corpus

The petition is denied.

Court reconvened at 1:30 p.m.

Present: The Honorable Gilbert Nares, Acting Presiding and The Honorable Associate Justices James McIntyre and Terry O'Rourke
Deputy Clerk: D. E. Moore

D036803 Kardashian v. Affordable Surgery et al.

Cause called on merits. Michael John Grobaty, Esq. argued for appellant. Michael Paul Thomas, Esq. argued for respondent. Mr. Grobaty replied for appellant. Cause submitted.

COURT OF APPEAL OF STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE

May 14, 2001 (Continued)

Court recessed at 2 p.m. to change panel members. New panel members: The Honorable Judith Haller, Acting Presiding Justice, and The Honorable Associate Justices James McIntyre and Terry O'Rourke

D036244 Desmet et al. v. Gallo et al.

Cause called on merits. David J. Gallo, argued for appellant in pro per. Jay Marshall Coggan, Esq. argued for respondent. Mr. Gallo replied. Cause submitted.

D036814 Taylor v. Trustees of the California State University

Cause called on merits. Dennis Nelson, Esq. argued for appellant. Leroy Anderson, Esq. argued for respondent. Mr. Nelson replied for appellant. Cause submitted.

D036457 Rosenthal v. O'Leary

Cause called on merits. Ilena Rosenthal, argued for respondent in pro per. Lois Marie Kosch, Esq. argued for appellant. Cause submitted.

D033801 Velarde et al. v. Western Auto Supply Company, Inc., et al.

Cause called on merits. Thomas Tosdal, Esq. argued for appellant. Horacio Barraza, Esq. argued for appellant. Robin Meadow, Esq. argued for respondent, Cooper Tire & Rubber Supply Company, Inc. Mr. Tosdal replied. Cause submitted.

Court recessed at 3:40 p.m. until Tuesday, May 15, 2001 at 9:00 a.m.

COURT OF APPEAL OF STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE

May 15, 2001

D035741 People v. Velazquez

D037343 In re Martin Garcia Velazquez

The petition for writ of habeas corpus D037343, is consolidated with the appeal D035741, for disposition.

D035741 People v. Velazquez

D037343 In re Velazquez on Habeas Corpus

(consolidated) Judgment affirmed; petition denied. Kremer, P.J.; We Concur: Huffman, J.; O'Rourke, J.

D036022 People v. Moy

The judgment is affirmed. Nares, Acting P.J.; We Concur: Haller, J.; McDonald, J.

D036221 People v. Nares

Appeal dismissed. McIntyre, J.; We Concur: McDonald, Acting P.J., O'Rourke, J.

D035852 People v. Johnson

The judgment is affirmed. Benke, Acting P.J.; We Concur: McDonald, J.; McIntyre, J.

D034789 People v. Jamchi

Order modifying opinion and denying rehearing. No change in judgment.

D036984 In re Denise R., a Juvenile

The judgment is affirmed. Kremer, P.J.; We Concur: Benke, J., O'Rourke, J.

D037461 O'Brian v. Superior Court of San Diego County/Quinn

The petition is denied.

D035774 People v. Ambriz

The judgment is affirmed. Haller, J.; We Concur: Nares, Acting P.J., McIntyre, J.

D035214 People v. Perez

The petition for rehearing is denied.

Court convened at 9:00 a.m.

Present: The Honorable Patricia Benke, Acting Presiding Justice, and The Honorable Associate Justices
Richard Huffman and Judith Haller

Deputy Clerk: D. E. Moore

D034897 San Diego Unified Port District v. Pacific Indemnity Company

Cause called on merits. Edward I. Silverman, Esq. argued for appellant. Michael G. Nardi, Esq. argued
for respondent. Mr. Silverman replied for appellant. Cause submitted.

COURT OF APPEAL OF STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE

May 15, 2001 (Continued)

Court recessed at 9:45 a.m. to change panel members. New panel members: The Honorable Patricia Benke, Acting Presiding Justice, and The Honorable Associate Justices Judith Haller and Terry O'Rourke

D034733 People v. Clements

D036973 In re Clements on Habeas Corpus

Cause called on merits. Patrick Morgan Ford, Esq. argued for appellant. Randy Einhorn, Deputy Attorney General argued for respondent. Mr. Ford replied for appellant. Cause submitted as to appeal ONLY, D034733.

D036808 Frank v. Ford et al.

Cause called on merits. Gregory Keith Waitman, Esq. argued for appellant. Kevin Fang, Esq. argued for respondent. Mr. Waitman replied for appellant. Cause submitted.

D036997 Shores v. State Farm Fire and Casualty et al.

Cause called on merits. Timothy John Salyer, Esq. argued for appellant. Barry R. Levy, Esq. argued for respondent. Mr. Salyer replied for appellant. Cause submitted.

Court recessed at 10:54 a.m. until 1:30 p.m.

Court reconvened at 1:30 p.m.

Present: The Honorable Daniel Kremer, Presiding Justice, and The Honorable Associate Justices Richard Huffman and Alex McDonald

Deputy Clerk: D. E. Moore

D035424 People v. Shipley

Cause called on merits. Michael Satris, Esq. argued for appellant. Michael Murphy, Deputy Attorney General argued for respondent. Mr. Satris replied for appellant. Cause submitted.

D036812 Pauley v. CPT Group, Inc.

Cause called on merits. Ernest Day Carman, Esq. argued for appellant. Hema Christine Bhamre, Esq. argued for respondent. Mr. Carman replied for appellant. Cause submitted.

D037002 Berry v. Corbett

Cause called on merits. Richard V. McMillan, Esq. argued for appellant. No appearance by Gary A. Dapelo, Esq., counsel for respondent, Corbett. Neil Roger Gunny, Esq. argued for respondent, Coen. Mr. McMillan replied for appellant. Cause submitted.

D037272 Barnett, et al. v. Fireman's Fund Insurance Company

Cause called on merits. Scott Zimmerman, Esq. argued for appellant. John Robert Armstrong, Esq. argued for respondent. Mr. Zimmerman replied for appellant. Cause submitted.

COURT OF APPEAL OF STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE

May 15, 2001 (Continued)

D036807 Ippolito v. Ventana

Cause called on merits. Martin S. Friedlander, Esq. argued for appellant. Kendra J. Hall, Esq. argued for respondent. Mr. Friedlander replied for appellant. Cause submitted.

D034864 Ferrell v. County of San Diego

Cause called on merits. Michael H. Fish, Esq. argued for appellant/cross-respondent. William A. Johnson, Deputy County Counsel argued for respondent/cross-appellant. Mr. Johnson replied. Cause submitted.

Court recessed at 3:30 p.m. until Wednesday, May 16, 2001 at 9:00 a.m.

D037463 Scott I. v. The Superior Court of San Diego County/San Diego County Health and Human Services Agency

The petition is denied. Huffman, J.; We Concur: Kremer, P.J., McIntyre, J.

COURT OF APPEAL OF STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE

May 16, 2001

D035890 People v. Walker

The court grants rehearing on its own motion.

D036992 Jensen v. Koll Center Newport A.

The order sustaining defendants' general demurrers to Jensen's first, second, sixth, seventh, eighth, ninth, tenth and twelfth causes of action is affirmed. In all other respects the order and judgment are reversed. Each party shall bear its own costs on appeal. McDonald, J.; We Concur: Kremer, P.J., Nares, J.

D036738 Resendiz v. Superior Court of San Diego County/People

Let a peremptory writ of mandate issue directing the superior court to vacate its September 22, 2000, order overruling Petitioner's demurrer and to enter a new order sustaining the demurrer. Petitioner shall recover costs in this writ proceeding. CERTIFIED FOR PUBLICATION. McDonald, J.; I Concur: Huffman, Acting P.J.; I respectfully dissent (opinion): Nares, J.

D037701 Hodges v. Elig et al.

Pursuant to California rules of Court, rule 10c, the appeal filed March 22, 2001, is dismissed for failure of appellant to deposit costs for preparing the record.

D035439 People v. Valenzuela

The judgment is affirmed. Huffman, Acting P.J.; We Concur: McDonald, J., McIntyre, J.

D037317 In re Lexie R. et al., Juveniles

The appeal is dismissed.

D033849 People v. Green

The judgment is affirmed. Kremer, P.J.; We Concur: Benke, J., Huffman, J.

D037402 Richard Pick as Trustee etc., et al. v. Superior Court of San Diego County/City of San Diego

The petition is denied.

D037822 Rogers et al. v. Superior Court of San Diego County/Bachmann

The petition is denied.

Court convened at 9:00 a.m.

Present: The Honorable Richard Huffman, Acting Presiding Justice, and The Honorable Associate Justices Gilbert Nares and Alex McDonald
Deputy Clerk: D. E. Moore

D034163 People v. Rios

Cause called on merits. Joyce M. Keller, Esq. argued for appellant. Marvin Mizell, Deputy Attorney General argued for respondent. Cause submitted.

COURT OF APPEAL OF STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE

May 16, 2001 (Continued)

D035143 People v. Maria

Cause called on merits. Chris Truax, Esq. argued for appellant. David Delgado-Rucci, Deputy Attorney General argued for respondent. Mr. Truax replied for appellant. Cause submitted.

D036580 Romero et al. v. Superior Court/Smith-RPI

Matter called on merits. Tim Walker, Esq. argued for petitioner. Elaine L. Heine, Esq. argued for real party in interest. Mr. Walker replied for petitioner. Matter submitted.

Court recessed at 9:52 a.m. to change panel members. New panel members: The Honorable Patricia Benke, Acting Presiding Justice, and The Honorable Associate Justices Richard Huffman and Alex McDonald

D035526 Palacio v. County of Imperial, et al.

Cause called on merits. Vicente G. Palacio, argued for appellant in pro per. Michael T. Gibbs, Esq. argued for respondent. Mr. Palacio replied. Cause submitted.

Court recessed at 10:30 a.m. until 1:30 p.m.

Court convened at 1:30 p.m.

Present: The Honorable Daniel Kremer, Presiding Justice, and The Honorable Associate Justices Richard Huffman and Gilbert Nares
Deputy Clerk: D. E. Moore

D035163 People v. Huntsberry

Cause called on merits. Roland J. Haddad, Esq. argued for appellant. Janelle Boustany, Deputy Attorney General argued for respondent. Mr. Haddad replied for appellant. Cause submitted.

D035234 People v. Delgado

Cause called on merits. Neil F. Auwarter, Esq. argued for appellant, and submitted additional authorities. Steve Oetting, Deputy Attorney General argued for respondent. Mr. Auwarter replied for appellant. Cause submitted.

D037161 Morson et al. v. Superior Court

Matter called on merits. David A. Rosen, Esq. argued for petitioner. Peter H. Crossin, Esq. was present in oral argument for petitioner, but did not argue. James C. Martin, Esq. argued for real party in interest, Baxter Healthcare. Regina Petty, Esq. argued for real party in interest, Johnson & Johnson. Philip A. Harley, Esq. argued for petitioner. Mr. Rosen replied. Matter submitted.

D034787 Argonaut Great Central Insurance Company v. St. Mar Enterprises, Inc., et al.

Cause called on merits. Peter A. Lynch, Esq. argued for appellant, Argonaut. Jay Douglas Harker, Esq. argued for appellant, Zurich-American Insurance Company. Mark T. Brisebois, Esq. argued for respondent, Cole Vision. James M. Roth, Esq. argued for respondent/cross-appellant, St. Mar Enterprises. Mr. Lynch replied. Mr. Roth replied. Cause submitted.

COURT OF APPEAL OF STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE

May 16, 2001 (Continued)

Court recessed at 3:20 p.m. until Thursday, May 17, 2001 at 9:00 a.m.

D037794 Steward v. Superior Court of San Diego County/People
The petition is denied.

D037154 In re Choun on Habeas Corpus
The petition is denied.

**D037626 Custom Coach Corporation v. The Superior Court of San Diego County/Advanced
Bus Industries et al.**
The petition is denied.

D036811 Dao et al. v. Shipway
The judgment is affirmed. O'Rourke, J.; We Concur: Nares, Acting P.J., McIntyre, J.

D037690 In re Kerch on Habeas Corpus
The petition is denied.

COURT OF APPEAL OF STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE

May 17, 2001

D034916 People v. Cochran

Cochran's conviction of section 311.4, subdivision (b) is reversed based on insufficiency of the evidence. In all other respects, the judgment is affirmed. CERTIFIED FOR PUBLICATION. Kremer, P.J.; I Concur: McDonald, J., Concurring and Dissenting (Opinion) Benke, J.

Court convened at 9:00 a.m.

Present: The Honorable Judith Haller, Acting Presiding Justice, and The Honorable Associate Justices Alex McDonald and James McIntyre
Deputy Clerk: D. E. Moore

D035563 Harter v. City of National City

Cause called on merits. Joe B. Cordileone, Esq. argued for appellant. Arlene Prater, Esq. argued for respondent. Mr. Cordileone replied for appellant. Cause submitted.

Court recessed at 9:25 a.m. to change panel members. New panel members: The Honorable Patricia Benke, Acting Presiding Justice, and The Honorable Associate Justices Alex McDonald and James McIntyre

D034398 Hicks, et al. v. E. T. Legg & Associates, et al.

Cause called on merits. George McGill, Esq. argued for appellant. Brian Paul Worthington, Esq. argued for respondent, E. T. Legg & Associates. Charles A. Bird, Esq. argued for respondent, Executive Trustee Services, Inc. Mr. McGill replied. Cause submitted.

Court recessed at 10:30 a.m. to change panel members. New panel members: The Honorable Daniel Kremer, Presiding Justice, and The Honorable Associate Justices Patricia Benke and Alex McDonald

D034967 Araiza-Klier v. Teachers Insurance and Annuity Association, et al.

Cause called on merits. Barbara K. Meserve, Esq. argued for appellant and cross-respondent, and submitted additional authorities. David Baumgarten, Esq. argued for respondent and cross-appellant. William J. Phippard, Esq. argued for respondent, Teachers Insurance. Ms. Meserve replied. Mr. Baumgarten replied. The court granted parties permission to file supplemental letter briefs. Cause to be submitted once all supplemental letter briefs are in.

Court recessed at 11:00 a.m. until 1:30 p.m.

D036993 Visionshape, Inc. v. Kofax Image Products, Inc.

It is ordered that the opinion filed April 17, 2001, and certified for publication is ordered not to be published. There is no change in judgment. The petition for rehearing sua sponte is denied.

Court reconvened at 1:30 p.m.

Present: The Honorable Daniel Kremer, Presiding Justice, and The Honorable Associate Justices Richard Huffman and Alex McDonald
Deputy Clerk: D. E. Moore

COURT OF APPEAL OF STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE

May 17, 2001 (Continued)

D033855 People v. Corona

Cause called on merits. Elizabeth Missakian, Esq. argued for appellant. Niki Shaffer, Deputy Attorney General argued for respondent. Ms. Missakian replied for appellant. Cause submitted.

D035596 People v. Little

Cause called on merits. Russell S. Babcock, Esq. argued for appellant. Susan Miller, Deputy Attorney General argued for respondent. Cause submitted.

D036086 Executive Auto Sales, Inc., et al. v. Grissom & Associates et al.

Cause called on merits. Steven E. Boehmer, Esq. argued for appellant. Suzanne Norris, Esq. argued for respondent. Mr. Boehmer replied for appellant. Cause submitted.

Court recessed at 2 p.m. to change panel members. New panel members: The Honorable Daniel Kremer, Presiding Justice, and The Honorable Associate Justices Gilbert Nares and Alex McDonald

D036002 Carzola v. Carzola

Cause called on merits. Joseph James Rego, Esq. argued for appellant. Judith E. Klein, Esq. argued for respondent. Mr. Rego replied for appellant. Cause submitted.

D036998 Hajali et al. v. Nguyen et al.

Cause called on merits. Thomas E. Elenbaas, Esq. argued for appellant/cross-respondent. William Harold Steiner, Esq. argued for respondent/cross-appellant. Mr. Elenbaas replied. Mr. Steiner replied. Cause submitted.

Court recessed at 2:40 p.m. until Friday, May 18, 2001 at 2 p.m.

D037505 In re Jensen on Habeas Corpus

The petition is denied.

D037388 Brown as successor Trustee v. Superior Court of San Diego County/Morris

The petition is denied.

D037143 Granger v. Workers' Compensation Appeals Board and Cigna Property and Casualty Insurance Company

The petition is denied.

COURT OF APPEAL OF STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE

May 18, 2001

D037178 Hughes v. C.C.W. PTY., Ltd. et al

The appeal is dismissed.

D036866 Marriage of Whitfield

The matter is remanded to the trial court to recalculate the child support award consistent with the views expressed in Part III, *ante*. In all other respects, the order is affirmed. Karen to recover her costs on appeal; except for a remand for a mathematical calculation, Karen has prevailed on this appeal. Haller, J.; We Concur: McIntyre, J., O'Rourke, J.

D034979 People v. Vargas

The judgment is affirmed. Kremer, P.J.; We Concur: Huffman, J., Nares, J.

D033075 People v. Whitlow et al.

The judgment against Dreyer is affirmed. The judgment against Whitlow is reversed. The Clerk of the Court of Appeal is directed to forward a copy of this opinion to the California State Bar pursuant to Business and Professions Code section 6086.7.

Court convened at 1:30 p.m.

Present: The Honorable Patricia Benke, Acting Presiding Justice, and The Honorable Associate Justices Judith Haller and James McIntyre
Deputy Clerk: D. E. Moore

D037278 Boles v. Streit et al.

Cause called on merits. William Paoli, Esq. argued for appellant, telephonically. Terrence J. Schafer, Esq. argued for respondent. Mr. Paoli replied for appellant. Cause submitted.

Court recessed at 2:10 p.m.

Court reconvened at 2:15 p.m.

Present: The Honorable Daniel Kremer, Presiding Justice, and The Honorable Associate Justices Patricia Benke and Judith Haller

D036806 Briglio v. Board of Dental Examiners for the State of California

Cause called on merits. Norman Lawrence Schafler, Esq. argued for appellant. Timothy L. Newlove, Deputy Attorney General argued for respondent. Mr. Schafler replied for appellant. Cause submitted.

Court recessed at 2:33 p.m. to change panel members. New panel members: The Honorable Daniel Kremer, Presiding Justice, and The Honorable Associate Justices Patricia Benke and Richard Huffman

D035437 People v. Travis

Cause called on merits. Rebecca P. Jones, Esq. argued for appellant. Pat Zaharopoulos, Deputy Attorney General argued for respondent. Ms. Jones replied for appellant. Cause submitted.

COURT OF APPEAL OF STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE

May 18, 2001 (Continued)

Court recessed at 2:54 p.m. to change panel members. New panel members: The Honorable Daniel Kremer, Presiding Justice, and The Honorable Associate Justices Richard Huffman and Gilbert Nares

D036996 Richards et al. v. Wild Rivers; The Splash

Cause called on merits. John Clayton Adams, Esq. argued for appellant. Kristie M. Kawakami, Esq. argued for respondent. Mr. Adams replied for appellant. Cause submitted.

**D037005 American Realty & Financial Services Company of California v.
Arciero Sons, Inc., et al.**

Cause called on merits. Steven Ray Young, Esq. argued for appellant. Adam L. Streltzer, Esq. argued for respondent. Mr. Young replied for appellant. Cause submitted.

Court recessed at 3:35 p.m. until Monday, May 21, 2001 at 9:00 a.m.

D037503 In re Morgan on Habeas Corpus

The petition is denied as incomplete.

**D037453 Graphite Design International Inc. et al. v. Workers' Compensation Appeals
Board/Maria Castro**

The petition is denied.

D037506 In re Turner on Habeas Corpus

The petition is denied.

D037906 McCarley v. The Superior Court of San Diego County/State of California et al.

The petition is denied.

D035812 Kuebler v. McCambridge et al.

The request for publication of the opinion is denied. The request for modification of the opinion is denied.

D034733 People v. Clements

D036973 In re Clements on Habeas Corpus

(Consolidated) Judgment affirmed. Petition denied. Haller, J.; We Concur: Benke, Acting P.J., O'Rourke, J.